

AUG 16 2005

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:) Chapter 13
BALRAJ SINGH TAKHAR,) No. 2:04-bk-17439-JMM
) **MEMORANDUM DECISION RULING ON**
) **MATTER UNDER ADVISEMENT**
) Debtor.) (Opinion to be Posted)

9 On June 29, 2005, this court heard Gina Gill ("Gill") and Birinder Singh's ("Singh")
10 Motion to Allow Informal Proofs of Claim and Amendments to Informal Proofs of Claim. After
11 reviewing the pleadings and the entire file, the court now rules.

JURISDICTION

15 This court has jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157(b). Venue is proper
16 in this Court pursuant to 28 U.S.C. § 1409.

FACTS

20 Balraj Singh Takhar (“Debtor”) filed for Chapter 13 relief on October 4, 2004. Debtor’s
21 Schedule F lists \$267,396.30 in general unsecured debt. Included in this unsecured debt are the two
22 judgments at issue: an unsecured judgment in favor of Singh, in the amount of \$40,000.00; and an
23 unsecured judgment in favor of Gill, in the amount of \$176,800.00. Debtor’s Chapter 13 plan, filed
24 October 18, 2004, proposes to pay \$160 monthly over 36 months, for a total contribution of \$5,760.00.

1 After subtracting \$750 for attorneys' fees and \$523.80 for compensation to the trustee, \$4,486.20 remains
2 to be distributed to the general unsecured creditors. This provides for a less than 2% payout to general
3 unsecured creditors.

4 On January 18, 2005, Gill and Singh filed an Objection to Confirmation of Debtor's plan,
5 asserting that (1) the plan was not filed in good faith; (2) the plan does not provide for a greater recovery
6 for unsecured creditors than they would receive under a Chapter 7 liquidation; (3) the value of the
7 property to be distributed under the plan to Gill and Singh is less than the amount of their claims; and (4)
8 the plan does not provide that all of debtor's projected disposable income to be received during the life
9 of the plan will be applied to make plan payments. Discovery commenced.

10 Subsequently, Debtor filed a Motion to Strike Gill and Singh's Objection to Confirmation
11 for the reason that Gill and Singh were not holders of allowed claims and they therefore lacked standing
12 to prosecute their Objection. Gill and Singh withdrew their Objection. Gill and Singh then filed a
13 Motion to Allow Informal Proofs of Claim and Amendments to Informal Proofs of Claim. A hearing was
14 held on June 29, 2005.

15

16 **ISSUE**

17

18 Whether Gill and Singh's Objection to Debtor's Chapter 13 Plan can be allowed as an
19 informal proof of claim, when Gill and Singh failed to file formal proofs of claim prior to the claims
20 deadline?

21

22 **DISCUSSION**

23

24 Gill and Singh argue that their actions and pleadings in this case prior to the claims
25 deadline constitute an informal proof of claim to which the formal amendments they filed may relate
26 back. "The doctrine of the 'informal proof of claim' is well established in the Ninth Circuit, which

1 has ‘long applied the so-called rule of liberality in amendments.’” *In re Edelman*, 237 B.R. 146, 154
2 (9th Cir. BAP 1999) (citations omitted).

3 “Objections to Chapter 13 plans may qualify as informal proofs of claim.” *In re*
4 *Rolyn*, 266 B.R. 453, 454 (Bankr.N.D.Cal. 2001), *citing In re Larson*, 245 B.R. 609, 614 n.1
5 (Bankr.D.Minn. 2000). However, the Objection to the Chapter 13 plan must meet the requirements
6 for an informal proof of claim.

7 “For a document to constitute an informal proof of claim, it must state an explicit
8 demand showing the nature and the amount of the claim against the estate, and evidence an intent to
9 hold the debtor liable.” *In re Holm*, 931 F.2d 620, 622 (9th Cir. 1991). The only relevant part of Gill
10 and Singh’s Objection to Debtor’s Plan states:

11
12 The Gill Creditors [Gill and Singh] are relatives of the Debtor but have
13 a long history of litigation, in Arizona and India, with the Debtor.
14 Indeed, both Gill and Singh currently hold judgments against the
15 Debtor. Additionally, the Debtor has brought several lawsuits against
the Gill Creditors, as well as other family members and acquaintances,
in India, and the Gill Creditors have asserted a variety of defenses and
counterclaims against the Debtor in those suits.

16
17 The creditor “must establish each of the elements that have consistently been required
18 by the cases for over seventy-five years: (1) presentment of a writing; (2) within the time for the filing
19 of claims; (3) by or on behalf of the creditor; (4) bringing to the attention of the court; (5) the nature
20 and amount of a claim asserted against the estate.” *Edelman*, 237 B.R. at 155.

21
22 1. **Presentment of a Writing**

23
24 Gill and Singh filed their Objection to Debtor’s plan in writing. Therefore, the first
25 element has been satisfied.

1 2. **Within the Time for the Filing of Claims**

3 The claims deadline was February 15, 2005. Gill and Singh filed their Objection on
4 January 18, 2005, well before the expiration of the claims deadline. Since Gill and Singh's Objection
5 was filed within the time for the filing of claims, the second element has been satisfied.

6 7. **By or on Behalf of the Creditor**

9 Gill and Singh hired attorney Philip R. Rudd to file their Objection to Debtor's plan.
10 Mr. Rudd filed the objection on behalf of Gill and Singh. Therefore, the third element has been
11 satisfied.

12 13. **Bringing to the Attention of the Court**

15 Gill and Singh's Objection to Debtor's plan was properly filed on the court's docket.
16 This clearly brought the attention of the court to the Objection. Indeed, several hearings were held on
17 Gill and Singh's Objection. It is clear that the fourth element has been satisfied.

18 19. **The Nature and Amount of a Claim Asserted Against the Estate**

21 Gill and Singh's Objection does state the nature of the claim: it clearly states that both
22 Gill and Singh currently hold judgments against the Debtor and that the nature of the claim arises out
23 of a familial dispute. The description "judgment" has a specific legal meaning, which is a court's
24 final determination of the rights and obligations of the parties in a case. Describing the claim as a
25 judgment regarding a family dispute is sufficiently concrete; it implies that a court of competent
26 jurisdiction has ruled in favor of Gill and Singh, and granted them a judgment.

1 However, Gill and Singh's Objection does not specifically state the amount of the
2 claim asserted against the Debtor. The Ninth Circuit has held that “[t]he statement of the debt,
3 together with the intent to hold the estate liable, must appear when the document submitted and the
4 surrounding factual circumstances are ‘reasonably construed.’” *In re Western States Drywall, Inc.*,
5 145 B.R. 661, 668 (Bankr.D.Idaho 1992), *citing In re Anderson-Walker Indus., Inc.*, 798 F.2d 1285,
6 1288 (9th Cir. 1986). The court must therefore not only examine the text of Gill and Singh's
7 Objection, but also the circumstances surrounding it.

8 The circumstances surrounding Gill and Singh's Objection clearly show the nature of
9 the claim, the amount of the claim, and an intent to hold the estate liable. Debtor's Schedule F lists
10 and acknowledges a \$40,000.00 judgment held by Singh, and a \$176,800.00 judgment held by Gill.
11 Debtor does not list either of these judgments as disputed, contingent or unliquidated. Additionally,
12 Debtor's plan analysis, which calculates the estimated dividend under the plan at 2%, includes the
13 judgments of Gill and Singh. If Debtor's plan did not contemplate paying Gill and Singh on their
14 judgments, the estimated dividend under the plan would have been 9%. When the totality of
15 circumstances surrounding Gill and Singh's Objection are construed, the amount of their debt
16 “appears.”

17 The circumstances surrounding Gill and Singh's Objection also clearly shows an intent
18 by Gill and Singh to hold Debtor's estate liable. Gill and Singh were present at Debtor's Meeting of
19 the Creditors. Gill and Singh filed an Objection to Debtor's plan, and Motions for 2004
20 Examinations of Debtor and various related entities and persons. These circumstances show a clear
21 intent to hold Debtor liable.

22
23 **CONCLUSION**
24

25 Gill and Singh's Objection to Debtor's Chapter 13 Plan thus meets all of the
26 requirements of an informal proof of claim: it was in writing; it was filed within the time for the filing

1 of claims; it was filed by or on behalf of the creditor; it was brought to the attention of the court; and
2 it stated the nature and amount of a claim asserted against the estate. Because Gill and Singh's
3 Objection meets these requirements of an informal proof of claim, this court GRANTS Gill and
4 Singh's Motion to Allow Informal Proofs of Claim. Additionally, this court GRANTS Gill and
5 Singh's Motion to Amend their Informal Proofs of Claim because the Ninth Circuit has a long history
6 of liberally allowing amendments.

7 A separate order will be entered concurrently with this Memorandum Decision.

8

9 DATED: August 16, 2005.

10

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12 COPIES served as indicated below this 16
13 day of August, 2005, upon:

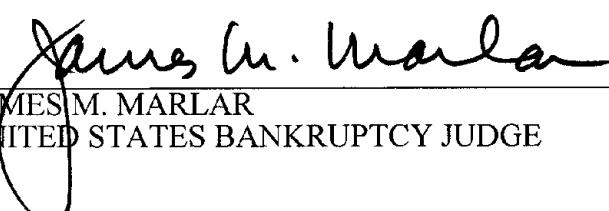
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UNITED STATES BANKRUPTCY JUDGE